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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs	)	CC Docket No. 01-92

To: The Commission

REPLY COMMENTS OF TRITON PCS LICENSE COMPANY, L.L.C.

Triton PCS License Company, L.L.C. ("Triton"), by its attorneys, hereby submits its reply comments on the CMRS Petitioners' Petition for Declaratory Ruling in the above-referenced proceeding.[1] Triton files these reply comments to respond *to* certain claims made by rural ILECs in their initial comments. As shown below, the rural ILEC objections to the CMRS Petition are baseless and the petition should be granted.

The rural ILECs make various arguments in support of their state interconnection tariff filings. Many of these arguments, and particularly the legal theories, are addressed in Triton's initial comments in this proceeding. These reply comments respond to the claims that unilateral tariffs are appropriate and contemplated by state law and that CMRS providers will lack

[1] T-Mobile USA, Inc., Western Wireless Corporation, Nextel Communications and Nextel Partners (the "CMRS Petitioners"), Petition for Declaratory Ruling: Lawfulness of Incumbent Local Exchange Carrier Wireless Termination Tariffs, filed September 6, 2002 (the "CMRS Petition"). The Commission requested comments by a public notice issued on September 30, 2002. Public Notice, "Comment Sought on Petitions for Declaratory Ruling Regarding Intercarrier Compensation for Wireless Traffic," DA 02-2436 (rel. Sept. 30, 2002).

incentives to negotiate interconnection agreements if unilateral ILEC interconnection tariffs at non-cost-based rates are not permitted.* These claims are incorrect and contrary to law.

First, there are three bedrock principles the Commission should affirm in this proceeding: (1) any charges for termination of CMRS-originated local traffic must be reciprocal; (2) any such charges must be symmetrical; and **(3)** any such charges must be reasonably based on the actual cost of terminating CMRS-originated traffic. Any deviation from these principles would be inconsistent with both the Commission's rules and the requirements of the Communications Act. For instance, both the Commission's rules and the Act require compensation to be reciprocal, that is for both carriers to be able to collect compensation for traffic they terminate.[3] The Commission's rules also call for charges to be symmetrical, unless the CMRS provider can prove that its costs are higher than those of the ILEC.[4] The rules and the statute also require rates for reciprocal compensation to be based "on a reasonable approximation of the additional costs of terminating such calls."[5]

Any ILEC interconnection tariff that does not meet these requirements is ***per se*** unlawful, and a CMRS provider cannot be required to abide by the terms of such an unlawful tariff. It does not matter whether a state regulator has approved such a tariff, either implicitly by permitting it

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[2] ***See,*** *e.g.,* Comments of John Staurulakis, Inc. at 7 (". . . it is entirely appropriate to have an 'incentive rate' to motivate CMRS providers to seek negotiation from the ILEC, regardless of size.").

[3] 47 U.S.C. §§ 251(b)(5), 252(d)(1)(A); 47 C.F.R. § 51.703.

[4] 47 C.F.R. § 51.711. It is important to note that this rule does not permit an ILEC to charge rates higher than those charged by the other carrier. There is an exception to this rule for one-way narrowband providers that is not applicable here.

[5] 47 U.S.C. § § 252(d)(1)(A)(ii).

to go into effect or through a state-level proceeding investigating the tariff.' **As** the Commission long ago established, states cannot trump the Commission's interconnection rules (let alone the interconnection provisions of the Communications Act) by their actions.' Indeed, any ruling that permits ILEC tariffs to go into effect when they do not meet the requirements of reciprocity, symmetry and reasonable rates would be contrary to the statute and the rules.

In this regard, rural ILEC arguments that they should be allowed to adopt unlawful interconnection tariffs to create incentives for CMRS providers to enter into interconnection agreements are irrelevant.[8] If the tariffs are inconsistent with federal law, they cannot be enforced regardless of the incentives they create. Moreover, as the record indicates, CMRS providers do not object to paying reciprocal compensation. Rather, they object to paying unreasonable rates that are unilaterally imposed and non-reciprocal.[9]

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[6] *See* Comments of Minnesota Independent Coalition at 3-5 (arguing that state approval of tariffs is sufficient and consistent with Communications Act interconnection requirements).

[7] *See, e.g.,* Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Report and Order*, 11 FCC Rcd 16499, 16513 (1996) ("The rules that the FCC adopts in this Report and Order are *minimum requirements* upon which the states may build.") (emphasis supplied).

[8] These arguments also are wrong. As described in Triton's initial comments and the comments of other wireless providers, in fact the ILECs lack incentive to bargain once their tariffs are in place, and it is uneconomic for wireless providers to challenge those tariffs at the state level. *See, e.g.,* Comments of Triton at 4; Comments of Cingular Wireless at **6.**

[9] In this regard, Triton agrees with BellSouth that carriers acting as transit carriers should be compensated for carrying transit traffic. Comments of BellSouth at 2. However, the party responsible for the payment should be the originating carrier, and no rural ILEC should be permitted to impose transiting costs on other carriers for traffic it originates. In addition, in some cases transiting carriers collect termination charges from the originating carrier, based on the theory that transit carriers pay termination charges for all traffic leaving their networks. In such cases, the originating carrier should not have to pay those charges to both the terminating and transiting carrier.

The maintenance of reasonable rates is particularly important. As the comments show, some rural ILEC interconnection tariffs charge the same rate for terminating compensation as for access service." Access rates, however, are not based on the "additional" costs of terminating traffic and, as the Commission has recognized repeatedly, typically far exceed those costs." Consequently, application of access rates to reciprocal compensation is presumptively unlawful and the Commission should bar rural ILECs from using such rates. Moreover, while the rural ILECs complain that a bill and keep regime prevents them from recovering their costs, the true costs of terminating CMRS traffic are far closer to zero than they are to typical rural ILEC access rates. In fact, if charges were reciprocal and lawful rates were applied, it likely would cost more to bill for reciprocal compensation than the amount that most rural ILECs would recover.

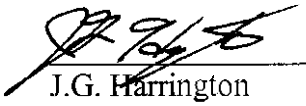
[10] Comments of Missouri Independent Telephone Company Group at 2 (charging access rates is appropriate because of routing of calls).

[11] ***See*** Comments of Alliance of Incumbent Rural Independent Telephone Companies at 18 **("As** the Commission is well aware, the pricing of rural LEC access is not based on TELRIC . . .").

For all these reasons, Triton PCS License Company, L.L.C., respectfully requests that the Commission adopt an order consistent with Triton's comments and these reply comments.

Respectfully submitted,

TRITON PCS LICENSE COMPANY, L.L.C.



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November 1.2002

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 1st day of November, 2002, I caused a copy of the foregoing Comments to be served by first-class mail, postage prepaid, except where indicated, to the following:

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* Via Hand Delivery